

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: POINTEWEST APARTMENTS AND THE MICHELSON ORGANIZATION	DOCKET NO. DRU-99-3
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DECLARATORY RULING

(Issued August 13, 1999)

On April 8, 1999, PointeWest Apartments and its manager, The Michelson Organization (hereinafter known as PointeWest), filed a petition for declaratory ruling with the Utilities Board. In particular, PointeWest asked for a declaratory ruling that it is not a public utility as defined by IOWA CODE § 476.1 (1999) or, in the alternative, that PointeWest's proposal to pass along to the tenants of the PointeWest apartments the cost to provide heat and water to the common areas and tenants' premises does not violate IOWA ADMIN. CODE 199-19.3(1)"b" (1999).

The Consumer Advocate Division of the Iowa Department of Justice (Consumer Advocate) responded on April 28, 1999, in support of the petition. Attached to Consumer Advocate's response was a copy of PointeWest's response to Consumer Advocate's data request number three, which was the basis for Consumer Advocate's support.

This ruling is issued more than 30 days after the filing of the petition pursuant to the informal agreement of counsel for the petitioner. IOWA ADMIN. CODE 199-4.4 (1999).

SUMMARY OF RELEVANT FACTS

For purposes of this declaratory ruling, the facts are set forth on pages 1 and 2 of PointeWest's petition and in PointeWest's response to Consumer Advocate's data request number three.

PointeWest Apartments is a residential apartment complex in West Des Moines, Iowa. MidAmerican Energy Company (MidAmerican) provides natural gas service to PointeWest. PointeWest provides heat and hot water generated from natural gas to both the common areas and the tenants' premises. The natural gas service is billed by MidAmerican through a single meter.

Under the proposal, each unit will be charged for gas based on previous annual averages divided by the square footage of each unit type. The rental rate of each unit will be reduced by the amount of the increased gas charge. The gas charge will be divided from the currently "bundled" costs for renting a unit.

QUESTIONS POSED

PointeWest requested that the Board address the following two questions:

1. Does PointeWest's proposal to pass along the costs of centralized heating and hot water to tenants of the PointeWest apartment complex render PointeWest a "public utility" subject to rule 19.3(1)"b"?

2. Does PointeWest's proposal come within the exception to rule 19.3(1)"b" for natural gas used in centralized heating, cooling, and water-heating systems, such that passing along the cost to tenants would not constitute the prohibited resale of natural gas?

DISCUSSION AND RULING

IOWA ADMIN. CODE 199-19.3(1)"b" provides as follows:

All gas delivered to multioccupancy premises where units are separately rented or owned shall be sold by a utility on the basis of individual meter measurement for each unit except for that gas used in centralized heating, cooling, or water heating systems, where individual metering is impractical, where a facility is designated for elderly or handicapped persons and utility costs constitute part of the operating cost and are not apportioned to individual tenants, or where submetering or resale of service was permitted prior to 1966.

MidAmerican's gas tariff at Original Issue Sheet No. 26 regarding multi-occupancy premises is identical to paragraph "b" of subrule 19.3(1).

Under PointeWest's proposal, utility costs for each tenant will be separate from the rent payment and determined by dividing the previous year's average gas charge by the square footage of each apartment unit. This method violates two parts of paragraph 19.3(1)"b." First, allocating the utility cost for the tenant's apartment constitutes prohibited apportionment to individual tenants. Second, the billing of tenants through a separate gas charge constitutes resale that was not permitted prior to 1966. Under paragraph 19.3(1)"b" and MidAmerican's tariff restating that rule, MidAmerican is not permitted to provide natural gas service to PointeWest if

PointeWest is in violation of the requirements of that paragraph because of the apportionment of gas costs to individual tenants and the separate billing of tenants for the gas charge.

The Board's response to PointeWest's question is consistent with its decision in GGP Limited Partnership, Docket No. WRU-97-8 (May 22, 1997). In that docket, the landlord of a large shopping center requested the Board allow it to install electric master metering for a portion of a proposed shopping mall in Coralville, Iowa. On May 22, 1997, the Board issued an order finding it would be "impractical" to individually meter the common areas. However, the Board stated the common costs should not be specifically allocated as "additional rents" because this would constitute submetering or resale of utility service. Following a conference with GGP, the Board, in a order issued August 7, 1997, granted GGP's request for rehearing and allowed master metering of the mall tenant building as well as the common areas. In its rehearing order, the Board did not disturb the requirement in its earlier ruling that GGP would not be allowed to allocate utility costs to tenants as "additional rents."

Consumer Advocate relied upon language in the preamble to adopted rules in Metering Requirements, Docket No. RMU-85-5 (June 13, 1985), in its support for PointeWest's petition. The master metering rules were changed to the current formulation subsequent to that 1985 rule making in Master Metering, Docket No. RMU-87-12 (November 9, 1987). The Board applied the current rule in the GGP case and does so again in this ruling.

Although PointeWest is not under the direct control of the Board, the Board has the authority to regulate the terms and conditions under which a building may be master metered. MidAmerican cannot provide PointeWest with gas at a master metered facility that violates IOWA ADMIN. CODE 199.3(1)"b." Therefore, it is unnecessary for the Board to reach the issue of whether the PointeWest proposal would render it a "public utility."

RULING

IT IS THEREFORE RULED:

1. The answer to the second question in the request for declaratory ruling filed by PointeWest Apartments and The Michelson Organization on April 1, 1999, is "no." The proposal to separately bill tenants for natural gas violates paragraph 19.3(1)"b" and MidAmerican is not permitted to provide natural gas service to a master metered customer that is in violation of the rule.
2. The results of the negative answer to the second question make it unnecessary for the Board to reach the first question.

UTILITIES BOARD

/s/ Allan T. Thoms

/s/ Susan J. Frye

ATTEST:

/s/ Judi K. Cooper
Executive Secretary, Deputy

/s/ Diane Munns

Dated at Des Moines, Iowa, this 13th day of August, 1999.